



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA-R08-RCRA-2018-0084; FRL-9974-26-Region 8]

North Dakota: Proposed Authorization of State Hazardous Waste Management Program Revisions and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The state of North Dakota has applied to the EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed North Dakota's application and has determined that these changes satisfy all requirements needed to qualify for final authorization and is proposing to authorize the state's changes. The EPA uses the regulations entitled, "Approved State Hazardous Waste Management Programs" to provide notice of the authorization status of state programs and to incorporate by reference those provisions of state statutes and regulations that will be subject to the EPA's inspection and enforcement. This action also proposes to codify in the regulations the authorized provisions of North Dakota's hazardous waste management program and to incorporate by reference authorized provisions of the state's regulations. Finally, today's rule corrects errors made in the state authorization citations published in the February 14, 2008 **Federal Register** authorization document for North Dakota.

DATES: Comments on this proposed rule must be received by **[insert date 30 days after the date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-R08-RCRA-2018-0084** by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. *Email:* lin.moye@epa.gov.
3. *Fax:* (303) 312-6341 (prior to faxing, please notify the EPA contact listed below).
4. *Mail, Hand Delivery or Courier:* Moye Lin, Resource Conservation and Recovery Program, EPA Region 8, Mailcode 8P-R, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Courier or hand deliveries are only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify business hours. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R08-RCRA-2018-0084**. The EPA's policy is that all comments received will be included in the public docket without change and may be available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or email. The federal <http://www.regulations.gov> website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical

difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at: EPA Region 8, from 8:00 a.m. to 4:00 p.m., 1595 Wynkoop Street, Denver, Colorado 80202-1129, contact: Moyer Lin, phone number (303) 312-6667, or the North Dakota Department of Health (NDDH) from 9:00 a.m. to 4:00 p.m., 918 East Divide Avenue, 3rd Floor, Bismarck, North Dakota 58501-1947, phone number (701) 328-5166. The public is advised to call in advance to verify business hours.

FOR FURTHER INFORMATION CONTACT: Moyer Lin, Resource Conservation and Recovery Program, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129; phone number (303) 312-6667; Email address: lin.moyer@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Authorization of Revisions to North Dakota's Hazardous Waste Program

A. Why are revisions to state programs necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask the EPA to authorize the changes. Changes to state

programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279. When states make other changes to their regulations, it is often appropriate for the states to seek authorization for the changes.

B. What decisions have we made in this rule?

We conclude that North Dakota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant North Dakota final authorization to operate its hazardous waste program with the changes described in the authorization application. North Dakota will continue to have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian country), and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in North Dakota, including issuing permits, until North Dakota is authorized to do so.

C. What is the effect of this proposed authorization decision?

If North Dakota is authorized for these changes, a facility in North Dakota subject to RCRA will have to comply with the authorized state requirements instead of the equivalent federal requirements in order to comply with RCRA. Additionally, such facilities will have to comply with any applicable federal requirements such as, HSWA regulations issued by the EPA

for which the state has not received authorization. North Dakota continues to have enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Conduct inspections and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements; suspend or revoke permits; and,
- Take enforcement actions regardless of whether North Dakota has taken its own actions.

This action to approve these provisions would not impose additional requirements on the regulated community because the regulations for which North Dakota is requesting authorization are already effective under state law and are not changed by the act of authorization.

D. What happens if the EPA receives comments on this action?

If the EPA receives comments on this proposed action, we will address those comments in our final action. You may not have another opportunity to comment, therefore, if you want to comment on this proposed authorization, you must do so at this time.

E. For what has North Dakota previously been authorized?

North Dakota initially received final authorization on October 5, 1984, effective October 19, 1984 (49 FR 39328) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on: June 25, 1990, effective August 24, 1990 (55 FR 25836); May 4, 1992, effective July 6, 1992 (57 FR 19087); April 7, 1994, effective June 6, 1994 (59 FR 16566); January 19, 2000, effective March 20, 2000 (65 FR 02897); September 26, 2005, effective November 25, 2000 (70 FR 56132), and February 14, 2008, effective April 14, 2008 (73 FR 8610).

F. What changes are we proposing to authorize with this action?

North Dakota submitted a final complete program revision application on September 20, 2016, and March 24, 2017, seeking authorization of their changes in accordance with 40 CFR 271.21. In its program revision application, the state of North Dakota also requested authorization for the Revisions to the Definition of Solid Waste (DSW) Rule, 80 FR 1694 (Jan. 13, 2015). However, due to the Court of Appeals for the District of Columbia Circuit's decisions, *Am. Petroleum Inst. v. EPA*, 862 F.3d 50 (D.C. Cir. 2017) and *Am. Petroleum Inst. v. EPA*, No. 09-1038 (D.C. Cir. Mar. 6, 2018) (vacating both the Factor 4 Legitimacy Test and the Verified Recycler Exclusion aspects of the 2015 DSW Rule), the EPA is not granting authorization to the state for: (1) one criterion in the determination of whether recycling is legitimate (on Revision Checklist 233B at 40 CFR 260.43(a)(4)); (2) one criterion in the variance determination for exceptions to the classification of hazardous secondary materials as a solid waste (on Revision Checklist 233D2 at 40 CFR 260.31(d)(6)); and (3) the verified recycler exclusion, which allowed generators to send their hazardous secondary materials to certain reclaimers (on Revision Checklist 233D2 at 40 CFR 261.4(a)(24)). We have determined that North Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we propose to grant North Dakota final authorization for the following program changes:

1. Program Revision Changes for Federal Rules

North Dakota seeks authority to administer the federal requirements that are listed below (the federal citation is followed by the analogs from the North Dakota Administrative Code (NDAC), Article 33-24, as revised January 1, 2016): NESHAP: Surface Coating of Automobiles and Light-Duty Trucks (69 FR 22601, 04/26/2004) (Checklist 205)/ 33-24-05-

420.7, 33-24-06-16.5; Nonwastewaters from Dyes and Pigments (70 FR 9138, 02/24/2005 and 70 FR 35032, 06/16/2005) (Checklists 206 and 206.1)/ 33-24-02-04.2.o., 33-24-02-17, 33-24-02/Appendices IV and V, 33-24-05-266, 33-24-05-280/Table; Uniform Hazardous Waste Manifest Rule (70 FR 10776, 03/04/2005 and 70 FR 35034, 06/16/2005) (Checklists 207 and 207.1)/ 33-24-01-04.30, 33-24-01-04.90, 33-24-01-04.91, 33-24-02-07.3.b.(2) and (3), 33-24-03-04.1 introductory paragraph and .1.a, 33-24-03-05, 33-24-03-07.6, 33-24-03-10.2, 33-24-03-11, 33-24-03-12.10, 33-24-03-21.3 and .5, 33-24-03-30.3 through .5, 33-24-03/Appendix I, 33-24-04-04.1.a through .c, 33-24-04-04.7.a through .d, 33-24-04-05.2 and .3, 33-24-05-37, 33-24-05-38.1.a through .c, 33-24-05-38.2.d, 33-24-05-38.5, 33-24-05-39.1 through .5, 33-24-05-39.6 except .6(h), 33-24-05-39.7, 33-24-05-43, 33-24-06-16.5; Methods Innovation Rule and SW-846 Final Update IIIB (70 FR 34538, 06/14/2005 and 70 FR 44150, 08/01/2005)/ 33-24-01-05.1 through .2.j, .3 through .6.a, .7 introductory paragraph and .a, 33-24-01-07.4, 33-24-01-08.4.a(1), 33-24-02-03.1.b.(5), 33-24-02-11.1.a, 33-24-02-12.1, 33-24-02-19.2.b.(3)(a) and (b), 33-24-02/Appendices I – III, 33-24-05-103.1, 33-24-05-183.2, 33-24-05-280.2 and Table, 33-24-05-288/Table UTS, 33-24-05-404.3.a.(2), .3.a.(4), .4.a(3), and .6, 33-24-05-433.4.b, 33-24-05-525.4.a.(2) and .7.b, 33-24-05-527.2.a, 33-24-05-531.1, 33-24-05-537.2.a and .2.b.(1), 33-24-05-610.2.a.(2), 33-24-05-644.3, 33-24-05-653.3, 33-24-05-663.3, 33-24-05/Appendices V, XII, and XXIV, 33-24-06-16.5, 33-24-06-17.2.w.(3)(a)[3] and [4], 33-24-06-17.2.ff.(1)(b)(2)[b], 33-24-06-19.2.b.(2)(a)[3] and [4], 33-24-06-19.4.c.(2)(a) and (b); Universal Waste Rule: Specific Provisions for Mercury Containing Equipment (70 FR 45508, 08/05/2005) (Checklist 209)/ 33-24-01-04.92, 33-24-01-04.153 introductory paragraph and .c, 33-24-02-06.5.c, 33-24-05-01.6.j.(3), 33-24-05-250.6.c, 33-24-05-701.1.c, 33-24-05-704, 33-24-05-709.1, .3, and .4, 33-24-05-713.3, 33-24-05-714.4, 33-24-05-732.2.d and .e, 33-24-05-733.3, 33-24-05-734.4, 33-24-06-

01.2.b.(8)(c), 33-24-06-16.5; Standardized Permit for RCRA Hazardous Waste Management Facilities (70 FR 53420, 09/08/2005) (Checklist 210)/ 33-24-01-04.48, .107 and .131, 33-24-01-05.3.a, .3.c.(27), and .4.a, 33-24-02-07.1, 33-24-05-950.3, 33-24-05-951, 33-24-05-960, 33-24-05-961, 33-24-05-963 through 968, 33-24-05-980 through 986, 33-24-05-990 through 998, 33-24-05-1010 through 1016, 33-24-05-1020, 33-24-05-1031, 33-24-05-1040 through 1047, 33-24-05-1060 through 1063, 33-24-05-1067, 33-24-05-1068, 33-24-05-1071, 33-24-05-1080 through 1087, 33-24-05-1100 through 1114, 33-24-05-1130 through 1138, 33-24-06-01.1 and .9, 33-24-06-02.4, 33-24-06-11.2, 33-24-06-12 introductory paragraph and .2.c, 33-24-06-16.5, 33-24-06-19.6, 33-24-06-45, 33-24-06-48, 33-24-06-52, 33-24-06-56, 33-24-06-57, 33-24-06-62, 33-24-06-65, 33-24-06-70, 33-24-06-73, 33-24-06-76, 33-24-06-80, 33-24-06-85, 33-24-07-01, 33-24-07-03 introductory paragraph and .3.a, 33-24-07-25.1 through .3, 33-24-07-26.1, 33-24-07-40 through 54; Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (“Headworks exemptions”) (70 FR 57769, 10/04/2005) (Checklist 211)/ 33-24-02-03.1.b.(4)(a) and (b), 33-24-02-03.1.b.(4)(d), (f), and (g); NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) (70 FR 59402, 10/12/2005) (Checklist 212)/ 33-24-01-05.1, .3 introductory paragraph, and .3.a, 33-24-05-144.2.a, 33-24-05-525.2.a, .c and .d, 33-24-06-01.12, 33-24-06-05.2.c, 33-24-06-14.10.a through .c, 33-24-06-14.11, 33-24-06-14/Appendix I, 33-24-06-16.5, 33-24-06-17.2.w.(5), .ff, .cc.(4)(c), and .dd.(5)(c), 33-24-06-19.2 and .4, 33-24-06-100; Burden Reduction Initiative (71 FR 16862, 04/04/2006) (Checklist 213)/ 33-24-01-10.2.b through .g, 33-24-02-04.1.i.(3)(e) and .6.i, 33-24-05-06.2.d, 33-24-05-07.1.d, 33-24-05-27.2, 33-24-05-31.9, 33-24-05-40.2 introductory paragraph, .a, .b, .f, .h, .j, .r, and .s, 33-24-05-55.4, .7.b, and .7.c, 33-24-05-56.6 and .7, 33-24-05-57.7, 33-24-05-64, 33-24-05-69, 33-24-05-77.9, 33-24-05-79.5, 33-24-05-93, 33-24-05-104.1

and .2.e.(2), 33-24-05-105.1 introductory paragraph and .2 introductory paragraph, 33-24-05-106.1.a, .1.b, and .9.b, 33-24-05-108.2 through .7, 33-24-05-109.6, 33-24-05-131.3, 33-24-05-167.2, 33-24-05-183.1 through .5, 33-24-05-147.1.b, 33-24-05-150.4, 33-24-05-256.1.a, .1.b, and .2.f, 33-24-05-258.1 and .4, 33-24-05-431.2.a and .b, 33-24-05-432.1, 33-24-05-475, 33-24-05-476.3.b and .d, 33-24-05-502.1 through .3, 33-24-05-504.1.d.(2) and .7, 33-24-05-505.1, 33-24-05-527.5.j, 33-24-05-528.4 and .11, 33-24-06-14/Appendix I, 33-24-06-16.5, 33-24-06-17.2 introductory paragraph, .t.(1), and .ee.(3)(o); Corrections to Errors in the Code of Federal Regulations (71 FR 40254, 07/14/2006) (Checklist 214)/ 33-24-01-04.69, .102, .109, .114, .153, and .158, 33-24-01-08.1.a and .4.a.(2), 33-24-01-13, 33-24-01-14, 33-24-02-02.3.a.(1), 33-24-02-03.1.b.(1), 33-24-02-04.1.t.(5), .2.f.(1)(b), .2.f.(2) introductory paragraph, .2.f.(2)(a), .2.i, .5.b.(6), and .5.c.(1), 33-24-02-06.1.b and .3.b, 33-24-02-11.1.c and .d, 33-24-02-11.Notes 1 through 4, 33-24-02-14.2, 33-24-02-16.1/Table, 33-24-02-17/Table entries “K107” and “K069”, 33-24-02-18.5, .5/Comment, and .5/Table, 33-24-02-18.6, .6/Comment, and .6/Table, 33-24-02/Appendices IV and V, 33-24-03-12.1.a.(4), 33-24-03-20.2, 33-24-03-23.2, 33-24-03-25.1.a, 33-24-03-40, 33-24-03-51.12, 33-24-03-53.2.a.(1) and .b.(1), 33-24-03-54.5, 33-24-03-57.1 introductory paragraph and .e, 33-24-05-01.6.b, 33-24-05-04.2.g.(3)(b), 33-24-05-08.2, 33-24-05-09.1, 33-24-05-54.1.a and .9.e, 33-24-05-55.1.b and .7.d.(1), 33-24-05-56.8.b, 33-24-05-58.4, 33-24-05-60.3, 33-24-05-64, 33-24-05-65, 33-24-05-67.3, 33-24-05-68.2.a.(2), 33-24-05-76.2.b.(2), 33-24-05-77.1.c.(1), .2.g, .2.h, .4.f, .5.e, and .6.j, 33-24-05-79.8.a, 33-24-05-81.2, .6, .7, .8.a and .b, .9, .10/Item(2)(d), and .11 through .14, 33-24-05-94.2.a, 33-24-05-106.3 through .5, and .7, 33-24-05-119.3.a.(1)(b), .3.b.(2), .5.a, .5.b.(1)(b), and .5.b.(1)(c), 33-24-05-120.1.b, 33-24-05-127.2.a, 33-24-05-131.1.b.(1)(a), 33-24-05-136.2, 33-24-05-137.1 and .2, 33-24-05-148.2, 33-24-05-167.3.g and .4, 33-24-05-170.1, 33-24-05-177.3.b and .5.b.(1)(b), 33-24-05-183.5.b,

33-24-05-186.1, 33-24-05-187.1 and .2, 33-24-05-188.2.a, 33-24-05-230.1, 33-24-05-235.1/Table, 33-24-05-251.1, 33-24-05-253.1.c, 33-24-05-255.3.e, 33-24-05-256.1.a, .1.c.(2), .1.d/Table (entry 8), .2.c.(2)/Table (entry 5), .2.d.(2), .3.b, .4 introductory paragraph through .c, 33-24-05-265.2 and .3, 33-24-05-280.7 and Table, 33-24-05-282/Table 1, 33-24-05-284.3, 33-24-05-285/Table 1, 33-24-05-288/Table UTS, 33-24-05-289.4, 33-24-05-290.3 and .7, 33-24-05-300, 33-24-05-301.1, .2.k, and .3.d, 33-24-05-400.3, 33-24-05-403.6.b.(7)(b), 33-24-05-404.2.b, 33-24-05-405.3.d.(1) and (2), 33-24-05-420.6, 33-24-05-428.3.a, 33-24-05-434.3.c, 33-24-05-450.1 and .3, 33-24-05-460.3, 33-24-05-476.2.c.(3), .3.c introductory paragraph, .3.c.(1), and .4, 33-24-05-477.1, 33-24-05-504.1.a, .1.d(1), .1.e, .2, .13.b, and .13.c, 33-24-05-525.2.b.(4), .4.c.(1)(a), and .7, 33-24-05-527.1.b.(6), .5.c.(1)(e), .5.e.(1)(c), .5.f.(2)(b)[2], and .5.h.(3), 33-24-05-528.1.d.(7), .2.b.(5)(b)[2], .2.e.(2)(a), .2.f.(8)(a), .3.a.(1), .3.a.(2)(a)[2], .3.a.(9) introductory paragraph and (a), .3.d.(4)(c)[1], and .7.a.(1), 33-24-05-531.4.a, 33-24-05-534.1.b.(2) and .2, 33-24-05-552.5.d.(3), .5.d.(4)(f), and .5.f.(3)(e), 33-24-05-553.5, 33-24-05-554.1, 33-24-05-555.5.f, 33-24-05-600.8, 33-24-05-610.2.b, 33-24-05-611 and 611/Table 1, 33-24-05-643.3.c.(1) and .3.e, 33-24-05-644.1 and .3.b, 33-24-05-645.1, 33-24-05-652.1, .2 introductory paragraph, .2.a.(2), .2.f.(2), and .2.f.(3), 33-24-05-655.1 and .2.b.(1)(b), 33-24-05-656.1.b, 33-24-05-657.1.b.(2), 33-24-05-659, 33-24-05-663.2.c, 33-24-05-664.5, 33-24-05-670.2.a, 33-24-05-713.2, 33-24-05-714.1, 33-24-05-734.1, 33-24-05-1067.6.b.(1)(a), 33-24-05/Appendix I Table 1 and Table 2 Section 6, Appendices XIII, XVIII through XXI, XXIII, XXIV, and XXVIII, 33-24-06-01.1, .2.b.(9)(a), and .10.a, 33-24-06-02, 33-24-06-03.4.a and .b, 33-24-06-07.2, 33-24-06-12.3, 33-24-06-14.4.b.(1), 33-24-06-14/Appendix I, 33-24-06-16.5, 33-24-06-17.1.e.(8), .2 introductory paragraph, .2.q.(3), .2.u.(6), .2.v.(2) and (7), .2.x.(9)(b), .2.aa, and .2.ee.(3)(o); Cathode Ray Tubes Rule (71 FR 42928, 07/28/2006) (Checklist 215)/ 33-24-01-04.13, .14, .16, and .17, 33-

24-02-04.1.v, 33-24-02-23, 33-24-02-25 through 33-24-05-27; NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments (73 FR 18970, 04/08/2008) (Checklist 217)/ 33-24-05-144.2.a and .c, 33-24-05-525.2.c.(2); F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes (73 FR 31756, 06/04/2008) (Checklist 218)/ 33-24-02-16.1/Table and .2.d; Revisions to the Definition of Solid Waste (73 FR 64668, 10/30/2008) (Checklist 219)/ 33-24-01-04.48, .59, .60, .77, .81, and .141, 33-24-01-09 introductory paragraph, .2, .4, and .5, 33-24-01-12 introductory paragraph, .1, and .3, 33-24-01-17 through 33-24-01-19, 33-24-02-01.3.d, 33-24-02-02.1 and .3.c, 33-24-02-04.1.x and .y, 33-24-02-33 through 33-24-02-42, 33-24-06-14/Appendix I; Academic Laboratories Generator Standards (73 FR 72912, 12/01/2008) (Checklist 220)/ 33-24-02-05.3.f and .g, 33-24-03-01.9, 33-24-03-60 through 33-24-03-77; Hazardous Waste Technical Corrections and Clarifications (75 FR 12989, 03/18/2010) (Checklist 223)/ 33-24-01-04.98, 33-24-01/Appendix I, 33-24-02-01.3.k, 33-24-02-02.3/Table 1, 33-24-02-04.1.q.(6), 33-24-02-05.2, .5, .6 introductory paragraph, .6.b, .7 introductory paragraph, and .7.b, 33-24-02-06.1.b introductory paragraph., .1.b.(2), .1.c, .3.a, and .4, 33-24-02-07.1 through .3, and .5, 33-24-02-13.1.h, 33-24-02-15.3 and .4, 33-24-02-16.1, 33-24-02-17.1/Table, 33-24-02-18.6, 33-24-02/Appendix IV (removal of entries K064, K065, K066, K090, K091), 33-24-03-01.5, 33-24-03-02.4, 33-24-03-07.7, 33-24-03-12.1.d, .2, .3, .4.d, .6, and .9, 33-24-03-14.2, 33-24-03-15.1, .2 introductory paragraph, and .4, 33-24-03-30.2, 33-24-04-03, 33-24-05-27.2, 33-24-05-31.4.b, 33-24-05-39.5.f, .6.a, .6.g, and .6.h, 33-24-05-183.4, 33-24-05-185.2, 33-24-05-201.2, 33-24-05-203, 33-24-05-230.4, 33-24-05-235.2, 33-24-05-526.3.a and .b, 33-24-05-280/Table (entries F025, K031, K156, K157, K158), 33-24-05-288/Table UTS, 33-24-05-552.1.c.(2) through (4), and .5.d.(4)(f), 33-24-06-10.1.a and .b, 33-24-06-16.5; Academic Laboratories Generator

Standards Technical Corrections (75 FR 79304, 12/20/2010) (Checklist 226)/ 33-24-03-61.1, 33-24-03-67.2.c.(1), 33-24-03-73.5.a, 33-24-03-75.1.a and .2.a; Revision of the Land Disposal Treatment Standards for Carbamate Wastes (76 FR 34147, 06/13/2011) (Checklist 227)/ 33-24-05-280/Table, 33-24-05-288/Table UTS; Hazardous Waste Technical Corrections and Clarifications Rule (77 FR 22229, 04/13/2012) (Checklist 228)/ 33-24-02-17.1 (entry K107), 33-24-05-201.2; Conditional Exclusions for Solvent Contaminated Wipes (78 FR 46448, 07/31/2013) (Checklist 229)/ 33-24-01-04.100, .128, and .164, 33-24-02-04.1.w and .2.p; Conditional Exclusion for Carbon Dioxide (CO₂) Streams in Geologic Sequestration Activities (79 FR 350, 01/03/2014) (Checklist 230)/ 33-24-01-04.11, 33-24-02-04.9; Hazardous Waste Electronic Manifest Rule (79 FR 7518, 02/07/2014) (Checklist 231)/ 33-24-01-04.38, .39, .90, and .151; 33-24-03-04.1.b, 33-24-03-07.8 and .9, 33-24-04-04.1 and .9, 33-24-05-38.1 introductory paragraph, .1.b, and .6 through .11, 33-24-06-16.5; Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule (79 FR 36220, 06/26/2014) (Checklist 232)/ 33-24-01-04.15, 33-24-02-25.1.e.(1)(f), .1.e.(10), and .1.e.(11), 33-24-02-27; Revisions to the Definition of Solid Waste (80 FR 1694, 01/13/2015) (Checklist 233A)/ 33-24-01-10.3, 33-24-01-12.3 through .5, 33-24-01-18; Revisions to the Definition of Solid Waste (80 FR 1694, 01/13/2015) (Checklist 233B)/ 33-24-01-04.24 and .59, 33-24-01-19.1.a through .c, 33-24-02-02.2.c and .d, 33-24-02-02.7; Revisions to the Definition of Solid Waste (80 FR 1694, 01/13/2015) (Checklist 233C)/ 33-24-02-01.3.h; Revisions to the Definition of Solid Waste (80 FR 1694, 01/13/2015) (Checklist 233D2)/ 33-24-01-09.6, 33-24-01-10.4, except .4.f, 33-24-01-17.2 introductory paragraph and .2.d, 33-24-01-17.3.e, 33-24-02-01.3.d, 33-24-02-02.3.c, and .3.d/Table 1, 33-24-02-04.1.x, 33-24-02-33 through 33-24-02-42, 33-24-02-120 through 33-24-02-129, 33-24-06-14/Appendix I; Revisions to the Definition of Solid Waste (80 FR 1694,

01/13/2015) (Checklist 233E)/ 33-24-01-04.116, 33-24-02-02.3.c and .d/ Table 1, 33-24-02-04.1.z, 33-24-02-50 through 33-24-02-70, 33-24-02-170 through 33-24-02-173.1.a, 33-24-02-174, 33-24-02-175, 33-24-02-200 through 33-24-02-203.2, 33-24-02-204, 33-24-02-206, 33-24-02-207 through 33-24-02-209.2; Response to Vacatur of the Comparable Fuels Rule and the Gasification Rule (80 FR 18777, 04/08/2015) (Checklist 234)/ 33-24-02-04.1.l.(1) and .1.p, 33-24-02-22; Disposal of Coal Combustion Residuals from Electric Utilities (80 FR 21302, 04/17/2015) (Checklist 235)/ 33-24-02-04.2.d.

2. State-initiated Changes

North Dakota has made amendments to its regulations that are not directly related to any of the federal rules addressed in Item F.1 above. These state-initiated changes are either for the purpose of clarifying existing authorized provisions, or of adopting provisions to render the state's regulations both clearer and internally consistent. The state's regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the federal laws and regulations. These state-initiated changes are submitted under the requirements of 40 CFR 271.21(a) and include the following provisions from the North Dakota Administrative Code (NDAC), Article 33-24, as revised January 1, 2016: 33-24-01-04.21, .29, .84, and .126; 33-24-02-04.1.i.(3)(d); 33-24-02-06.5 introductory paragraph; 33-24-02-07.3.a through .b.1, .4, and .5.a through .c; 33-24-02-18.3; 33-24-03-13.2; 33-24-03-14.3; 33-24-03-17; 33-24-05-07.4.b; 33-24-05-38.2.b, .2.c, and .3; 33-24-05-47.1 through .4; 33-24-05-61.4.c; 33-24-05-75.5; 33-24-05-76.2.a introductory paragraph and .2.b introductory paragraph; 33-24-05-79.6.c.(1); 33-24-05-81.1 and .8.a; 33-24-05-103 introductory paragraph; 33-24-05-106.8; 33-24-05-132.1, .2.b, and .2.c; 33-24-05-180.2 introductory paragraph; 33-24-05-250.3.a; 33-24-05-252.1; 33-24-05-253.1.b.(1) and (2); 33-24-05-256.1.d; 33-24-05-271.2 and .3; 33-24-05-278; 33-24-05-289.1

through .3 introductory paragraph; 33-24-05-290.1 introductory paragraph and .1.a; 33-24-05-403.14; 33-24-05-421; 33-24-05-456.3.c and .3.d introductory paragraph; 33-24-05-459.6.a; 33-24-05-501; 33-24-05-504.1.c and .9; 33-24-05-536; 33-24-05-645.8; 33-24-05-654.7; 33-24-05-664.7; 33-24-05-718.2; 33-24-05-821.3; 33-24-05-822.4; 33-24-05/Appendix II; 33-24-06-01.2 introductory paragraph and .2.c; 33-24-06-05.1 introductory paragraph through 2.b, and .3 through .5; 33-24-06-17.2.hh and .3.d.2; 33-24-06-30.1.c; 33-24-07-14.

The state-initiated changes also include conforming changes to internal references to the incorporation by reference of 40 CFR part 265 which was renumbered from 33-24-06-16(1) to 33-24-06-16(5) at the following citations: 33-24-02-04.1.i(3)(d); 33-24-05-254.8.b.(5); 33-24-05-290.1.a; 33-24-05-403.14.a(2); 33-24-05-528.1.f (3) and .12; 33-24-05-536.2.b, .4.b, and .5; 33-24-05-552.1.2; 33-24-05-622.1 introductory paragraph; 33-24-05-664.1; and 33-24-06-17.2.hh(7).

Since receiving authorization of the base program, North Dakota has removed certain provisions from the authorized program regulations, which resulted in the clarification of the state's program. These provisions have been reviewed and we have determined that it is appropriate for the state to remove them, and that their removal has no impact on the equivalency or consistency with the federal program. The provisions removed were NDAC sections: 33-24-06-06.3; 33-24-06-16.1 through .4 as found in the January 1, 2016 version of the regulations; 33-24-05-56.11 as found in the December 1, 2003 version of the regulations; 33-24-05-132.2.b as found in the December 1, 1988 version of the regulations; and 33-24-05-132.4 as found in the January 1, 1984 version of the regulations.

G. Where are the revised state rules different from the Federal rules?

We consider the following state requirements to be more stringent than the federal

requirements: 33-24-02-22, 33-24-02-25, 33-24-02-27, 33-24-02-30.5 33-24-03-20.2, and 33-24-03-23.2, because North Dakota requires documentation, such as manifests, to be submitted to the state in addition to the federal U.S. EPA; 33-24-02-36.4.a because North Dakota has additional state-specific insurance requirements; and 33-24-05-968 because North Dakota has more stringent location standards that restrict the location of permitted facilities within certain geographical areas.

There are no requirements that are broader-in-scope than the federal program in these revisions.

North Dakota's rules, promulgated pursuant to this application, contain an error which may create confusion within the regulated community. The EPA has determined that the error does not pose implementation or enforcement problems; therefore, the EPA will approve this application with the understanding that the state will correct this item during its next rulemaking. The error is at 33-24-05/Appendix II within the North Dakota Administrative Code (NDAC), revised January 1, 2016.

H. Who handles permits after the final authorization takes effect?

North Dakota will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which were issued prior to the effective date of this authorization.

I. How does this action affect Indian country (18 U.S.C. section 1151) in North Dakota?

North Dakota is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to:

1. Lands within the exterior boundaries of the following Indian Reservations located within or abutting the State of North Dakota:
 - a. Fort Totten Indian Reservation
 - b. Fort Berthold Indian Reservation
 - c. Standing Rock Indian Reservation
 - d. Turtle Mountain Indian Reservation
2. Any land held in trust by the U.S. for an Indian tribe, and
3. Any other land, whether on or off a reservation that qualifies as Indian country within the meaning of 18 U.S.C. 1151.

Therefore, this program revision does not extend to Indian country where the EPA will continue to implement and administer the RCRA program.

II. Corrections

Corrections to February 14, 2008 (73 FR 8610) Authorization document: The following two citations: 33-24-05-256.1.c.1 and 33-24-05-256.1.c.2 were not included in the authorization of Checklist 137 that was published February 14, 2008. We have reviewed these citations and determined that it is appropriate to include them as technical corrections as part of this codification.

III. Incorporation by Reference

A. What is codification?

Codification is the process of including the statutes and regulations that comprise the state's authorized hazardous waste management program into the CFR. Section 3006(b) of RCRA, as amended, allows the EPA to authorize state hazardous waste management programs. The state regulations authorized by the EPA supplant the federal regulations concerning the same

matter with the result that after authorization, the EPA enforces the authorized regulations. Infrequently, state statutory language which acts to regulate a matter is also authorized by the EPA with the consequence that the EPA enforces the authorized statutory provision. The EPA does not authorize state enforcement authorities and does not authorize state procedural requirements. The EPA codifies the authorized state program in 40 CFR part 272 and incorporates by reference state statutes and regulations that make up the approved program which is federally enforceable in accordance with Sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions.

B. What is the history of the codification of North Dakota's hazardous waste management program?

The EPA incorporated by reference North Dakota's then authorized hazardous waste program effective April 14, 2008 (73 FR 8610). In this action, the EPA is proposing to revise Subpart JJ of 40 CFR part 272 to include the authorization revision actions described in this preamble.

C. What decisions have we proposed in this rule?

In this action, the EPA is proposing to finalize regulatory text that includes those incorporated by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to finalize the incorporation by reference of the North Dakota rules described in the amendments to 40 CFR part 272 set forth below. The EPA has made, and will continue to make, these documents available electronically through <http://www.regulations.gov> and in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

This action proposes to codify the EPA's authorization of North Dakota's base hazardous waste management program and its revisions to that program. The proposed codification reflects the state program that will be in effect at the time the EPA's authorized revisions to the North Dakota hazardous waste management program addressed in this proposed rule become final. This proposed action does not reopen any decision the EPA previously made concerning the authorization of the state's hazardous waste management program. The EPA is not requesting comments on its prior decisions published in the **Federal Register** actions referenced in Section I.E of this preamble.

The EPA is proposing to incorporate by reference the EPA's approval of North Dakota's hazardous waste management program by amending Subpart JJ to 40 CFR part 272. The proposed action amends section 272.1751 and incorporates by reference North Dakota's authorized hazardous waste regulations, as amended effective January 1, 2016. Section 272.1751 also references the demonstration of adequate enforcement authority, including procedural and enforcement provisions, which provide the legal basis for the state's implementation of the hazardous waste management program. In addition, section 272.1751 references the Memorandum of Agreement, the Attorney General's Statements, and the Program Description, which are evaluated as part of the approval process of the hazardous waste management program in accordance with Subtitle C of RCRA.

D. What is the effect of North Dakota's codification on enforcement?

The EPA retains the authority under federal statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in all authorized states. With respect to enforcement actions, the EPA will rely on federal sanctions,

federal inspection authorities, and federal procedures rather than the state analogs to these provisions. Therefore, the EPA is not proposing to incorporate by reference North Dakota's inspection and enforcement authorities, nor are those authorities part of North Dakota's approved state program which operates in lieu of the federal program. 40 CFR 272.1751(c)(2) lists these authorities for informational purposes, and because the EPA also considered them in determining the adequacy of North Dakota's procedural and enforcement authorities. North Dakota's authority to inspect and enforce the state's hazardous waste management program requirements continues to operate independently under state law.

E. What state provisions are not proposed as part of the codification?

The public is reminded that some provisions of North Dakota's hazardous waste management program are not part of the federally-authorized state program. These non-authorized provisions include:

1. Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (see 40 CFR 271.1(i));
2. Federal rules for which North Dakota is not authorized, but which have been incorporated into the state regulations because of the way the state adopted federal regulations by reference;
3. State procedural and enforcement authorities which are necessary to establish the ability of the state's program to enforce compliance, but which do not supplant the federal statutory enforcement and procedural authorities.
4. Federal rules which North Dakota adopted, but which were vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 09-1038, rulings dated July 7, 2017, and March 6, 2018).

State provisions that are “broader in scope” than the federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, the EPA proposes to list in 40 CFR 272.1751(c)(3) the North Dakota statutory provisions that are “broader in scope” than the federal program, and which are not part of the authorized program being incorporated by reference. While “broader in scope” provisions are not part of the authorized program and cannot be enforced by the EPA, the state may enforce such provisions under state law.

North Dakota has adopted, but is not authorized for, the federal rules published in the **Federal Register** on April 12, 1996 (61 FR 16290); October 22, 1998 (63 FR 56710), and January 8, 2010 (75 FR 1235). Therefore, these federal amendments included in North Dakota’s adoption by reference at section 33-24-06-16.5 of the North Dakota Administrative Code, are not part of the state’s authorized program and are not part of the proposed incorporation by reference addressed by this **Federal Register** document.

F. What will be the effect of the proposed codification on Federal HSWA requirements?

With respect to any requirement(s) pursuant to HSWA for which the state has not yet been authorized, and which the EPA has identified as taking effect immediately in states with authorized hazardous waste management programs, the EPA will enforce those federal HSWA standards until the state is authorized for those provisions.

The proposed codification does not affect federal HSWA requirements for which the state is not authorized. The EPA has authority to implement HSWA requirements in all states, including states with authorized hazardous waste management programs, until the states become authorized for such requirements or prohibitions, unless the EPA has identified the HSWA requirement(s) as an optional or as a less stringent requirement of the federal program. A

HSWA requirement or prohibition, unless identified by the EPA as optional or as less stringent, supersedes any less stringent or inconsistent state provision which may have been previously authorized by the EPA (50 FR 28702, July 15, 1985).

Some existing state requirements may be similar to the HSWA requirements implemented by the EPA. However, until the EPA authorizes those state requirements, the EPA enforces the HSWA requirements and not the state analogs.

IV. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize state requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by state law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's proposed authorization of North Dakota's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action proposes to authorize pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538). For the same reason, this proposed action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on

the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize and codify state requirements as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA.

This proposed action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This proposed action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a state’s application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed action, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the action in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the

executive order. This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). “Burden” is defined at 5 CFR 1320.3(b).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule proposes to authorize pre-existing state rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by state law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

List of Subjects

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business

information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 272

Environmental protection, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply.

Authority: This rule is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 25, 2018.

Douglas Benevento,
Regional Administrator,
Region 8.

For the reasons set forth in the preamble, 40 CFR parts 271 and 272 are amended as follows:

PART 271 – REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

EPA is proposing to grant final authorization under part 271 to the State of North Dakota for revisions to its hazardous waste program under the Resource Conservation and Recovery Act.

PART 272 - APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Revise § 272.1751 to read as follows:

§ 272.1751 North Dakota State-Administered Program: Final Authorization.

(a) *History of the State of North Dakota authorization.* Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), North Dakota has final authorization for the following elements as submitted to the EPA in North Dakota's base program application for final authorization which was approved by the EPA effective on October 19, 1984. Subsequent program revision applications were approved effective on August 24, 1990, July 6, 1992, June 6, 1994, March 20, 2000, November 25, 2005, April 14, 2008, and **[EFFECTIVE DATE OF FINAL RULE]**.

(b) *Enforcement authority.* The state of North Dakota has primary responsibility for enforcing its hazardous waste management program. However, the EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and

regulatory provisions, regardless of whether the state has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.*

(1) *Incorporation by reference.* The North Dakota statutes and regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq. This incorporation by reference is approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the North Dakota regulations that are incorporated by reference in this paragraph from North Dakota Legislative Council, Second Floor, State Capitol, 600 E. Boulevard Avenue, Bismarck, North Dakota 58505, phone (701) 328-2916. You may inspect a copy at EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, phone number (303) 312-6231, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(i) The Binder entitled “EPA-Approved North Dakota Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program,” dated April 2018.

(ii) [Reserved]

(2) *Legal basis.* The EPA considered the following statutes and regulations in evaluating the state program but is not incorporating them herein for enforcement purposes:

(i) North Dakota Century Code (NDCC), Volume 13A, 2012 Replacement, North Dakota Constitution, Article XI: Sections 5 and 6.

(ii) North Dakota Century Code, Volume 4A, 2012 Replacement. Chapter 23-01 “State Department of Health”, Section 23-01-04.1; Chapter 23-20.3 “Hazardous Waste

Management”, Sections 23-20.3-01, 23-20.3-02 introductory paragraph, (2), (3) through (8), (10), (13) through (16), and (18); 23-20.3-03; 23-20.3-04; 23-20.3-05(3), (5), (6), and (8); 23-20.3-06 through 23-20.3-10; and Chapter 23-29 “Solid Waste Management and Land Protection”, Section 23-29-04.

(iii) North Dakota Century Code, Volume 4A, 2015 Pocket Supplement. Chapter 23-01 “State Department of Health”, Section 23-01-36

(iv) North Dakota Century Code, Volume 5, 2012 Replacement. Chapter 28-32 “Administrative Agencies Practice Act”, Section 28-32-21.1 “Actions against administrative agencies – Attorney’s fees and costs”.

(v) North Dakota Century Code, Volume 6, 2012 Replacement. Chapter 32-40 “Environmental Law Enforcement”, Sections 32-40-03 through 32-40-11.

(vi) North Dakota Century Code, Volume 9A, 2012 Replacement, as amended by the 2015 Pocket Supplement. Chapter 44-04 “Duties, records and meetings”, Sections 44-04-18 through 19.1.

(vii) North Dakota Administrative Code (NDAC), Article 33 – 24, Hazardous Waste Management, as amended through January 1, 2016. Sections 33-24-01-15; 33-24-01-16; 33-24-06-05, except .2.c; 33-24-06-06.2; 33-24-06-09; 33-24-06-15.1.6 through .3.b; 33-24-07-03.4; 33-24-07-04 through 33-24-07-14; 33-24-07-25 through 33-24-07-27; and 33-24-07-40 through 33-24-07-54.

(3) *Related legal provisions.* The following statutory and regulatory provisions are broader in scope than the federal program, are not part of the authorized program, are not incorporated by reference, and are not federally enforceable:

(i) North Dakota Century Code, 2012 Replacement, Volume 4A, Chapter 23-01

“State Department of Health”, Section 23-01-04.1(6).

(ii) North Dakota Century Code, Volume 4A, 2012 Replacement. Chapter 23-20.3 “Hazardous Waste Management”, Sections 23-20.3-02(1); 23-20.3-05.1; 23-20.3-05.2; and 23-20.3-05.3.

(iii) North Dakota Administrative Code, Article 33-24, “Hazardous Waste Management”, as amended through January 1, 2016, Sections 33-24-03-03.4; 33-24-04-02.3; 33-24-05-02 second sentence; 33-24-06-14.3.a(4); and 33-24-06-21.

(iv) North Dakota’s hazardous waste regulations set forth additional transporter requirements including permit requirements at 33-24-04-02. The transporter permit requirements are broader in scope than the federal program.

(4) *Unauthorized state amendments and provisions.*

(i) North Dakota has partially or fully adopted, but is not authorized to implement, the federal rule published in the **Federal Register** on October 22, 1998 (63 FR 56710) Post-Closure Requirements and Closure Process (HSWA/non-HSWA) (Checklist 174). The EPA will continue to implement the federal HSWA requirements for which North Dakota is not authorized until the state receives specific authorization for those requirements.

(ii) The federal rules listed in the following table are not delegable to states. North Dakota has adopted these provisions and left the authority to the EPA for implementation and enforcement.

Federal Requirement	Federal Register Reference	Publication Date
Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision (HSWA) (Checklist 152)	61 FR 16290.....	April 12, 1996
OECD Requirements; Export Shipments of Spent Lead-Acid Batteries (Non-HSWA)	75 FR 1236.....	January 8, 2010

Federal Requirement	Federal Register Reference	Publication Date
(Checklist 222)		

(iii) North Dakota has adopted the following federal provisions from the *Revisions to the Definition of Solid Waste Rule*, 80 FR 1694 (Jan. 13, 2015) which have since been vacated by the U.S. Court of Appeals for the District of Columbia Circuit in *Am. Petroleum Inst. v. EPA*, 862 F.3d 50 (D.C. Cir. 2017) and *Am. Petroleum Inst. v. EPA*, No. 09-1038 (D.C. Cir. Mar. 6, 2018) (vacating both the Factor 4 Legitimacy Test and the Verified Recycler Exclusion aspects of the 2015 DSW Rule): (1) one criterion in the determination of whether recycling is legitimate at 40 CFR 260.43(a)(4); (2) one criterion in the variance determination for exceptions to the classification of hazardous secondary materials as a solid waste (at 40 CFR 260.31(d)(6)); and (3) the verified recycler exclusion, which allowed generators to send their hazardous secondary materials to certain reclaimers at 40 CFR 261.4(a)(24).

(5) *Memorandum of Agreement*. The Memorandum of Agreement between the EPA Region 8 and the state of North Dakota, signed by the Environmental Health Section of the North Dakota Department of Health on July 18, 2016, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(6) *Statement of Legal Authority*. “Attorney General’s Statement: Hazardous Waste Management Program” signed by the Attorney General of North Dakota on June 8, 1984, and revisions, supplements, and addenda to that Statement dated February 22, 1989, February 11, 1984, October 13, 1999, April 23, 2004, August 19, 2004 and December 5, 2016, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(7) *Program Description.* The Program Description and any other materials submitted as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 et seq.

3. Appendix A to part 272 is amended by revising the listing for “North Dakota” to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

North Dakota

(a) The statutory provisions include: North Dakota Century Code (NDCC), Volume 4A, 2012 Replacement. Chapter 23-20.3 “Hazardous Waste Management”, Sections 23-20.3-05(1), (2), (4), (7), and (9). Copies of the North Dakota statutes that are incorporated by reference are available from Matthew Bender & Company Inc., 701 E. Water Street Charlottesville, VA 22902-5389, phone number: (800) 833-9844.

(b) The regulatory provisions include: North Dakota Administrative Code (NDAC), Article 33-24, as revised January 1, 2016, except reserved provisions.

Chapter 33-24-01 – General provisions: Sections 33-24-01-01 through 33-24-01-04, 33-24-01-05, except .2.k and .7.a; 33-24-01-06 through 33-24-01-09; 33-24-01-10, except .4.f; 33-24-01-11 through 33-24-01-14; 33-24-01-17; 33-24-01-18; and 33-24-01-19, except .1.d.

Chapter 33-24-02 – Identification and Listing of Hazardous Waste: Sections 33-24-02-01 through 33-24-02-03; 33-24-02-04, except .1.y; 33-24-02-05; 33-24-02-06, except .1.e; 33-24-02-07 through 33-24-02-10; 33-24-02-11, except the phrase “or a miniflash continuously closed cup tester, using the test method specified in American Society for Testing and Material D6450-

99 (incorporated by reference in section 33-24-01-05)” in paragraph .1.a; 33-24-02-12 through 33-24-02-19; 33-24-02-25 through 33-24-02-27; 33-24-02-33 through 33-24-02-42; 33-24-02-50 through 33-24-02-70; 33-24-02-120 through 33-24-02-129; 33-24-02-170 through 33-24-02-175; 33-24-02-180 through 33-24-02-194; 33-24-02-200 through 33-24-02-209; and Appendices I, IV, and V.

Chapter 33-24-03 – Standards for Generators: Sections 33-24-03-01, except .4; 33-24-03-02; 33-24-03-03.1 and .2; 33-24-03-03.3 except the phrase “and a transporter permit”; 33-24-03-04 through 33-24-03-24; 33-24-03-30; 33-24-03-40; 33-24-03-60 through 33-24-03-77; and Appendix I.

Chapter 33-24-04 – Standards for Transporters: Sections 33-24-04-01, except .4 and Note following paragraph .3.b; 33-24-04-02.1, except the phrase “, a transporter permit, and a registration certificate”; 33-24-04-02.2, except the phrases “and a registration certificate, or a transporter permit,” in the first sentence, and “and issue a registration certificate” in the second sentence; and 33-24-04-03 through 33-24-04-08.

Chapter 33-24-05 – Standards for Treatment, Storage, and Disposal Facilities and for the Management of Specific Hazardous Waste and Specific Types of Hazardous Waste Management Facilities: Sections 33-24-05-01; 33-24-05-02, except the second sentence; 33-24-05-03, except 33-24-05-03.1; 33-24-05-04 through 33-24-05-10; 33-24-05-15 through 33-24-05-20; 33-24-05-26 through 33-24-05-31; 33-24-05-37; 33-24-05-38, except .1.c and .4; 33-24-05-39 through 33-24-05-44; 33-24-05-47 through 33-24-05-69; 33-24-05-74 through 33-24-05-81; 33-24-05-89 through 33-24-05-98; 33-24-05-103 through 33-24-05-115; 33-24-05-118 through 33-24-05-128; 33-24-05-130 through 33-24-05-138; 33-24-05-144 through 33-24-05-151; 33-24-05-160 through 33-24-05-170; 33-24-05-176 through 33-24-05-188; 33-24-05-201 through 33-24-05-

204; 33-24-05-230, except .2.c; 33-24-05-235, except .1/ Table entries (6) and (7); 33-24-05-250 through 33-24-05-253; 33-24-05-256; 33-24-05-258; 33-24-05-265; 33-24-05-266; 33-24-05-270 through 33-24-05-281; 33-24-05-282, except .2; 33-24-05-283; 33-24-05-284.8 through .13; 33-24-05-285; 33-24-05-286; 33-24-05-288 through 33-24-05-290; 33-24-05-300 through 33-24-05-303; 33-24-05-400 through 33-24-05-406; 33-24-05-420 through 33-24-05-435; 33-24-05-450 through 33-24-05-460; 33-24-05-475 through 33-24-05-477; 33-24-05-501 through 33-24-05-506; 33-24-05-525 through 33-24-05-537; 33-24-05-550 through 33-24-05-555; 33-24-05-600; 33-24-05-610 through 33-24-05-612; 33-24-05-620 through 33-24-05-624; 33-24-05-630 through 33-24-05-632; 33-24-05-640 through 33-24-05-647; 33-24-05-650 through 33-24-05-667; 33-24-05-670 through 33-24-05-675; 33-24-05-680; 33-24-05-681; 33-24-05-701 through 33-24-05-705; 33-24-05-708 through 33-24-05-720; 33-24-05-730 through 33-24-05-740; 33-24-05-750 through 33-24-05-756; 33-24-05-760 through 33-24-05-762; 33-24-05-770, except .4; 33-24-05-780; 33-24-05-781; 33-24-05-800 through 33-24-05-802; 33-24-05-820 through 33-24-05-826; 33-24-05-850; 33-24-05-855 through 33-24-05-857; 33-24-05-860; 33-24-05-865; 33-24-05-866; 33-24-05-870; 33-24-05-875; 33-24-05-880; 33-24-05-885; 33-24-05-890; 33-24-05-895 through 33-24-05-900; 33-24-05-905; 33-24-05-910; 33-24-05-915; 33-24-05-916; 33-24-05-950; 33-24-05-951; 33-24-05-960; 33-24-05-961; 33-24-05-963 through 33-24-05-968; 33-24-05-980 through 33-24-05-986; 33-24-05-990 through 33-24-05-998; 33-24-05-1010 through 33-24-05-1016; 33-24-05-1020; 33-24-05-1031; 33-24-05-1040 through 33-24-05-1043; 33-24-05-1045 through 33-24-05-1047; 33-24-05-1060 through 33-24-05-1063; 33-24-05-1067; 33-24-05-1068; 33-24-05-1071; 33-24-05-1080 through 33-24-05-1087; 33-24-05-1100 through 33-24-05-1114; 33-24-05-1130 through 33-24-05-1138; and Appendices I through VIII, X through XIII, XV through XXIV, and XXVI through XXIX.

Chapter 33-24-06 – Permits: Sections 33-24-06-01; 33-24-06-02, 33-24-06-03, except Note following paragraph .1.a.(2); 33-24-06-04; 33-24-06-05.2.c; 33-24-06-06.1; 33-24-06-07; 33-24-06-08; 33-24-06-10 through 33-24-06-13; 33-24-06-14, except .3.a.(4); 33-24-06-15 introductory paragraph through .1.a; 33-24-06-16.5 through .7; 33-24-06-17 through 33-24-06-20; 33-24-06-30 through 33-24-06-35; 33-24-06-45; 33-24-06-48; 33-24-06-52; 33-24-06-56; 33-24-06-57; 33-24-06-62; 33-24-06-65; 33-24-06-70; 33-24-06-73; 33-24-06-76; 33-24-06-80; 33-24-06-85; 33-24-06-100; and Appendix I to Section 33-24-06-14.

Chapter 33-24-07 – Permitting Procedures: Sections 33-24-07-01; 33-24-07-02; and 33-24-07-03, except .4.

Copies of the North Dakota regulations that are incorporated by reference are available from North Dakota Legislative Counsel, Second Floor, State Capitol, 600 East Boulevard, Bismarck, North Dakota 58505, phone number: (701) 328-2916.

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